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HOUSE BILL 296

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

EARLENE ROBERTS

AN ACT

RELATING TO JUVENILE JUSTICE; CHANGING THE PREDICATE OFFENSES FOR DELINQUENT OFFENDERS, YOUTHFUL OFFENDERS AND SERIOUS YOUTHFUL OFFENDERS; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-15.2 NMSA 1978 (being Laws 1993, Chapter 77, Section 1, as amended) is amended to read:

"31-18-15.2. DEFINITIONS.--As used in the Criminal Sentencing Act:

A. "serious youthful offender" means an individual sixteen or seventeen years of age who is charged with ~~[and indicted or bound over for trial for]~~ first degree murder or who is charged with a felony subsequent to a previous felony conviction pursuant to serious youthful offender or youthful offender proceedings; and

B. "youthful offender" means a delinquent child subject to adult or juvenile sanctions who is:

(1) fifteen to eighteen years of age at the time of the offense and who is adjudicated for at least one of the following offenses:

- 1 (a) second degree murder, as provided in Section 30-2-1
- 2 NMSA 1978;
- 3 (b) assault with intent to commit a violent felony, as provided
- 4 in Section 30-3-3 NMSA 1978;
- 5 (c) kidnapping, as provided in Section 30-4-1 NMSA 1978;
- 6 (d) aggravated battery, as provided in Subsection C of Section
- 7 30-3-5 NMSA 1978;
- 8 (e) aggravated battery upon a peace officer, as provided in
- 9 Subsection C of Section 30-22-25 NMSA 1978;
- 10 (f) shooting at a dwelling or occupied building or shooting at
- 11 or from a motor vehicle, [~~which results in great bodily harm to another person~~] as provided in
- 12 Section 30-3-8 NMSA 1978;
- 13 (g) dangerous use of explosives, as provided in Section
- 14 30-7-5 NMSA 1978;
- 15 (h) criminal sexual penetration, as provided in Section
- 16 30-9-11 NMSA 1978;
- 17 (i) robbery, as provided in Section 30-16-2 NMSA 1978;
- 18 (j) aggravated burglary, as provided in Section 30-16-4
- 19 NMSA 1978; [or]
- 20 (k) aggravated arson, as provided in Section 30-17-6 NMSA
- 21 1978;
- 22 (l) abuse of a child that results in great bodily harm or death
- 23 to the child, as provided in Section 30-6-1 NMSA 1978;
- 24 (m) trafficking controlled substances, as provided in
- 25 Subsection C of Section 30-31-20 NMSA 1978;

1 designated as a crime under the law if committed by an adult, including ~~[but not limited to]~~ the
2 following offenses:

3 (1) pursuant to municipal traffic codes or the Motor Vehicle Code:

4 (a) any driving while under the influence of intoxicating
5 liquor or drugs;

6 (b) any failure to stop in the event of an accident causing
7 death, personal injury or damage to property;

8 (c) any unlawful taking of a vehicle or motor vehicle;

9 (d) any receiving or transferring of a stolen vehicle or motor
10 vehicle;

11 ~~[(e) any homicide by vehicle;~~

12 ~~[(f)]~~ (e) any injuring or tampering with a vehicle;

13 ~~[(g)]~~ (f) any altering or changing of an engine number or
14 other vehicle identification numbers;

15 ~~[(h)]~~ (g) any altering or forging of a driver's license or permit
16 or any making of a fictitious license or permit;

17 ~~[(i)]~~ (h) reckless driving;

18 ~~[(j)]~~ (i) driving with a suspended or revoked license; or

19 ~~[(k)]~~ (j) any offense punishable as a felony;

20 (2) buying, attempting to buy, receiving, possessing or being served
21 any alcoholic liquor or being present in a licensed liquor establishment, other than a restaurant
22 or a licensed retail liquor establishment, except in the presence of the child's parent, guardian,
23 custodian or adult spouse. As used in this paragraph, "restaurant" means any establishment
24 where meals are prepared and served primarily for on-premises consumption and that has a
25 dining room, a kitchen and the employees necessary for preparing, cooking and serving meals.

1 "Restaurant" does not include establishments, as defined in regulations promulgated by the
2 director of the special investigations division of the department of public safety, that serve only
3 hamburgers, sandwiches, salads and other fast foods;

4 (3) any felony violation of the provisions of Sections 17-1-1 through
5 17-5-9 NMSA 1978 or any regulations adopted by the state game commission that relate to the
6 time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured,
7 killed, possessed, sold, purchased or shipped and for which a fine may be imposed or a civil
8 damage awarded;

9 (4) any violation of Section 30-29-2 NMSA 1978, regarding the
10 illegal use of a glue, aerosol spray product or other chemical substance;

11 (5) any violation of the Controlled Substances Act except a violation
12 of Subsection C of Section 30-31-20 NMSA 1978; [or]

13 (6) escape from the custody of a law enforcement officer or a juvenile
14 probation or parole officer or from any placement made by the department by a child who has
15 been adjudicated a delinquent child; or

16 (7) any violation of Section 30-15-1.1 NMSA 1978 regarding
17 unauthorized graffiti on personal or real property;

18 B. "delinquent child" means a child who has committed a delinquent act;

19 C. "delinquent offender" means a delinquent child who is subject to juvenile
20 sanctions only and who is not a youthful offender or a serious youthful offender;

21 D. "detention facility" means a place where a child may be detained under the
22 Children's Code pending court hearing and does not include a facility for the care and
23 rehabilitation of an adjudicated delinquent child;

24 E. "felony" means an act that would be a felony if committed by an adult;

25 F. "misdemeanor" means an act that would be a misdemeanor or petty

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1 misdemeanor if committed by an adult;

2 G. "restitution" means financial reimbursement by the child to the victim or
3 community service imposed by the court and is limited to easily ascertainable damages for
4 injury to or loss of property, actual expenses incurred for medical, psychiatric and
5 psychological treatment for injury to a person and lost wages resulting from physical injury,
6 which are a direct and proximate result of a delinquent act. "Restitution" does not include
7 reimbursement for damages for mental anguish, pain and suffering or other intangible losses.
8 As used in this subsection, "victim" means any person who is injured or suffers damage of any
9 kind by an act that is the subject of a complaint or referral to law enforcement officers or
10 juvenile probation authorities. Nothing contained in this definition limits or replaces the
11 provisions of Subsections A and B of Section
12 32A-2-27 NMSA 1978;

14 H. "serious youthful offender" means an individual sixteen or seventeen years
15 of age who is charged with [~~and indicted or bound over for trial for~~] first degree murder or who
16 is charged with a felony subsequent to a previous felony conviction pursuant to serious
17 youthful offender or youthful offender proceedings. A "serious youthful offender" is not a
18 delinquent child as defined pursuant to the provisions of this section; and

20 I. "youthful offender" means a delinquent child subject to adult or juvenile
21 sanctions who is:

22 (1) fifteen to eighteen years of age at the time of the offense and who
23 is adjudicated for at least one of the following offenses:

24 (a) second degree murder, as provided in Section 30-2-1
25 NMSA 1978;

(b) assault with intent to commit a violent felony, as provided
in Section 30-3-3 NMSA 1978;

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1 (c) kidnapping, as provided in Section
2 30-4-1 NMSA 1978;
3 (d) aggravated battery, as provided in Subsection C of Section
4 30-3-5 NMSA 1978;
5 (e) aggravated battery upon a peace officer, as provided in
6 Subsection C of Section 30-22-25 NMSA 1978;
7
8 [~~(e)~~] (f) shooting at a dwelling or occupied building or
9 shooting at or from a motor vehicle, [~~which results in great bodily harm to another person~~] as
10 provided in Section 30-3-8 NMSA 1978;
11 [~~(f)~~] (g) dangerous use of explosives, as provided in Section
12 30-7-5 NMSA 1978;
13 [~~(g)~~] (h) criminal sexual penetration, as provided in Section
14 30-9-11 NMSA 1978;
15 [~~(h)~~] (i) robbery, as provided in Section 30-16-2 NMSA
16 1978;
17 [~~(i)~~] (j) aggravated burglary, as provided in Section 30-16-4
18 NMSA 1978; [~~or~~
19 [~~(j)~~] (k) aggravated arson, as provided in Section 30-17-6
20 NMSA 1978;
21 (l) abuse of a child that results in great bodily harm or death
22 to the child, as provided in Section 30-6-1 NMSA 1978;
23 (m) trafficking controlled substances, as provided in
24 Subsection C of Section 30-31-20 NMSA 1978;
25 (n) homicide by vehicle or great bodily injury by vehicle, as
provided in Section 66-8-101 NMSA 1978;

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(o) attempt to commit any of the felony offenses set forth in Subparagraphs (a) through (n) of this paragraph, as provided in Section 30-28-1 NMSA 1978;

(p) conspiracy to commit any of the felony offenses set forth in Subparagraphs (a) through (n) of this paragraph, as provided in Section 30-28-2 NMSA 1978;

(q) attempt to commit first degree murder, as provided in Section 30-28-1 NMSA 1978; or

(r) conspiracy to commit first degree murder, as provided in Section 30-28-2 NMSA 1978;

(2) fifteen to eighteen years of age at the time of the offense and adjudicated for any felony offense and who has had [~~three~~] two prior, separate felony adjudications within a [~~three-year~~] two-year time period or three prior, separate felony adjudications within a five-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees are not considered a prior adjudication for the purposes of this paragraph; or

(3) fifteen years of age and adjudicated for first degree murder, as provided in Section 30-2-1 NMSA 1978."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1996.

State of New Mexico House of Representatives

FORTY-SECOND LEGISLATURE

SECOND SESSION, 1996

January 29, 1996

Mr. Speaker:

Your **RULES AND ORDER OF BUSINESS COMMITTEE**, to
whom has been referred

HOUSE BILL 296

has had it under consideration and finds same to be **GERMANE** in accordance with
constitutional provisions.

Respectfully submitted,

Barbara A. Perea Casey, Chairperson

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

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Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Lujan, Nicely, Olguin, Pederson, Wallach,

S. Williams

Absent: None

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